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## Judge Axes Bid To Smear Pa. Atty's Witness In \$1M Fine Row

By **Matt Fair**

Law360, Philadelphia (March 10, 2015, 4:10 PM ET) -- A Pennsylvania state judge refused Tuesday to hear evidence to impeach the credibility of a witness who recently came forward as part of a bid to clear Philadelphia-based defense attorney Nancy Raynor of \$1 million in sanctions over forbidden expert testimony presented during a 2012 medical malpractice trial.

Judge Paul Panepinto said that evidence offered by Klehr Harrison Harvey Branzburg & Ellers LLP attorney Matthew D'Annunzio of unpaid taxes owed by Joseph Chapman, an audiovisual technician who came forward in January claiming that he overheard Raynor remind the expert witness not to mention a plaintiff's smoking history before he testified in the malpractice case, was not relevant to the combative sanctions hearing that played out in his courtroom on Tuesday.

"The court, in an abundance of caution regarding what is more prejudicial than probative, will not allow you to continue with that line of questioning," Judge Panepinto said. "Any information regarding that is stricken from the record. The court doesn't want to hear anything more about it."

Raynor was **slapped with the \$1 million sanctions order** in November after Judge Panepinto found that she'd improperly allowed Dr. Paul Kelly to testify about a plaintiff's smoking history in violation of a pretrial order barring any mention of the issue during the 2012 medical malpractice trial.

The plaintiff, Rosalind Wilson, filed suit against Roxborough Memorial Hospital in July 2009 alleging that she was never told about a suspicious nodule that had appeared on a chest X-ray until she was diagnosed with stage 4 lung cancer some 20 months later. She died several weeks after the complaint was filed.

A second trial was subsequently ordered due to Kelly's testimony, and a jury returned \$2 million in damages to her family in November.

The state's Superior Court, which is considering an appeal of the \$1 million sanctions order, **agreed to stay the penalty** in mid-February and ordered Judge Panepinto to consider the new evidence offered by Chapman.

Chapman, an independent contractor who was hired to provide audiovisual services during the Wilson trial, **testified at a hearing last Wednesday** that he'd overheard a conversation between Raynor and Kelly before his testimony during which she stressed that any references to smoking had been expressly barred.

Chapman took the stand again on Tuesday after D'Annunzio said he'd had a chance to

review additional discovery from both Chapman and Digital Justice, the company that he freelances for.

Judge Panepinto's bench ruling regarding the impeachment evidence came after a string of vociferous objections by attorneys for both Raynor and Chapman over D'Annunzio's questioning of the witness.

In addition to challenging D'Annunzio's impeachment evidence, attorneys for Raynor and Chapman objected to questions over an email the trial technician was forwarded during the first Wilson trial in which Raynor said she felt she was being scapegoated over Kelly's remarks.

"It's quite obvious that this proceeding is being abused," said Jeffrey McCarron, an attorney with Swartz Campbell LLC representing Raynor. "It's not been established that he knew about its content at the time."

They also took issue with questions over bills that Digital Justice received from a malpractice insurer for one of the doctors sued as part of Wilson's lawsuit.

Clifford Haines, an attorney with Haines & Associates representing Chapman, argued that questions about the bills were improper because Chapman had never seen the document and was not involved in its creation.

"This witness is an employee of that business solely for the purpose of presenting documents in the courtroom. It's not been established that the witness ever saw this document, had anything to do with preparing the document, ever received the document, and now he's being questioned about it," Haines said. "My client can't be asked about that which he had nothing to do with."

When Haines and McCarron continued to object despite their objections being overruled, Judge Panepinto lashed out at the attorneys.

"This is ridiculous. Sit down and abide by the court's ruling," he said. "We're going to have you subject to contempt if you don't be quiet."

The judge said he would accept briefing from the parties before making any further ruling on the sanctions.

The plaintiffs are represented by Klehr Harrison Harvey Branzburg & Ellers LLP and Messa & Associates PC.

Raynor is represented by Jeffrey McCarron of Swartz Campbell LLC.

The case is Rosalind Sutch as executrix of the estate of Rosalind Wilson, deceased, v. Roxborough Memorial Hospital et al., case number 090700901, in the Court of Common Pleas of the State of Pennsylvania, County of Philadelphia.

--Editing by Mark Lebetkin.